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ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of the Removal and Prohibition
of:

MONICA LOPEZ
6875 N. Oracle Road
Suite #105
Tucson, AZ 85704

Respondent.

No. 09F-BD036-BNK

**NOTICE OF HEARING AND INTENT
TO REMOVE AND PROHIBIT FROM
FURTHER PARTICIPATION IN ANY
MANNER IN THE CONDUCT OF THE
AFFAIRS OF A FINANCIAL
INSTITUTION OR ENTERPRISE**

PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-138, 6-161, and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative Hearings, an independent agency, and is scheduled for December 12, 2008, at 9:00 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

The purpose of the Hearing is to determine whether grounds exist to remove or prohibit Respondent from further participation in any manner in the conduct of the affairs of a financial institution or enterprise pursuant to A.R.S. §§ 6-161(A), (B), and (C), and to prohibit Respondent, after a removal order has become final, from further participation in any manner as a director, officer, employee, agent or other person in the conduct of the affairs of any financial institution or enterprise pursuant to A.R.S. § 6-161(E).

Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to preside over the Hearing as the Administrative Law Judge, to make written recommendations to the Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office of Administrative Hearings has designated Lewis Kowal, at the address and phone number listed above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the

1 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
2 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law
3 Judge is specifically prohibited from entering.

4 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
5 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
6 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
7 Administrative Hearings.

8 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
9 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable
10 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence
11 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative
12 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.
13 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

14 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
15 made by a court reporter or by electronic means. Any party that requests a transcript of the
16 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

17 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
18 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

19 **NOTICE OF APPLICABLE RULES**

20 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
21 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
22 forth the rules of practice and procedure applicable in contested cases and appealable agency actions
23 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
24 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
25 R2-19-122. A copy of these rules is enclosed.

26 ...

1 Pursuant to A.A.C. R20-4-1209, Respondent shall file a written answer **within twenty (20)**
2 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Respondent's
3 position or defense and shall specifically admit or deny each of the assertions contained in this
4 Notice of Hearing. If the answering Respondent is without or is unable to reasonably obtain
5 knowledge or information sufficient to form a belief as to the truth of an assertion, Respondent shall
6 so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted.
7 When Respondent intends to deny only a part or a qualification of an assertion, or to qualify an
8 assertion, Respondent shall expressly admit so much of it as is true and shall deny the remainder.
9 Any defense not raised in the answer is deemed waived.

10 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondent will be**
11 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
12 true and admitted and the Superintendent may take whatever action is appropriate pursuant to A.R.S.
13 §§ 6-123, 6-131 and 6-161(B).

14 Respondent's answer shall be mailed or delivered to the Arizona Department of Financial
15 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
16 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
17 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy
18 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

19 **Persons with disabilities may request reasonable accommodations such as interpreters,**
20 **alternative format or assistance with physical accessibility.** Requests for accommodations must
21 be made as early as possible to allow time to arrange the accommodations. If accommodations are
22 required, call the Office of Administrative Hearings at (602) 542-9826.

23 **FACTS**

24 1. Respondent Monica Lopez ("Ms. Lopez") is employed as an escrow officer at Title
25 Security Agency of Arizona ("TSA"), branch #5591. TSA is an Arizona corporation.

26 2. TSA is licensed by the Department as an escrow agent, license number EA-0001723.

1 3. On November 5, 2007, the Department conducted an examination of TSA's business
2 affairs. On April 16, 2008, the Department extended its examination to include escrow transactions
3 performed by Ms. Lopez at TSA's Casas Adobes Branch in Tucson, Arizona. As a result of the
4 examination and investigation, the Department discovered that Ms. Lopez:

- 5 a. Failed to account properly for escrow property as required by the terms of the escrow;
- 6 b. Failed to disburse funds in accordance with the provisions of the HUD-1 escrow
7 settlement statement;
- 8 c. Disbursed escrow monies contrary to the provisions of the HUD-1 escrow settlement
9 statement;
- 10 d. Failed to maintain an adequate internal control structure as prescribed by
11 A.R.S. § 6-841;
- 12 e. Failed to follow written escrow instructions;
- 13 f. Disbursed escrow proceeds absent adequate escrow instructions; and
- 14 g. Failed to obtain prior instructions and authorization for the disbursement of escrow
15 funds to a third party who was not a party to the escrow; specifically:

16 **TSA'S CASAS ADOBES BRANCH, TUCSON, AZ**

17 **1. Escrow #06112866-041-ML**

18 **Open Date:** 03-17-06 **Close Date:** 04-07-06

19 **HUD-1 Contract Sales Price:** \$1,300,000

20 **Escrow Officer:** Monica Lopez

21 **Cash-out:** \$150,000 to Frank Padilla

22 **Loan Status:** Foreclosure initiated on 11-22-06

- 23 1. On April 6, 2006, Ms. Lopez signed the Certification Addendum to HUD-1
24 settlement statement, which states: "The HUD-1 settlement statement which I
25 have prepared is a true and accurate account of this transaction. I have caused or
26 will cause the funds to be disbursed in accordance with this statement.";
- 2. The \$150,000 cash-out disbursement, directly from escrow proceeds, was not
 disclosed on the Final HUD-1 escrow settlement statement and was not disclosed
 on the Pre-Audit HUD-1 escrow settlement statement provided to the lender;
- 3. Ms. Lopez failed to disclose the \$150,000 cash-out disbursement directly from the
 seller's escrow proceeds in the Final HUD-1 escrow settlement statement;
- 4. By not disclosing the \$150,000 cash-out disbursement from escrow proceeds, a

- 1 true, complete, and accurate disclosure of funds disbursed directly from escrow
2 proceeds was not provided to the lender on the Final HUD-1 escrow settlement
statement;
- 3 5. Ms. Lopez failed to follow the lender's specific escrow closing instructions. The
4 lender's specific closing instructions state, "The final HUD-1 settlement statement
must be completed at settlement and must accurately reflect all receipts and
5 disbursements indicated in these closing instructions and any amended closing
6 instructions subsequent hereto."; and
- 7 6. Ms. Lopez completed I.R.S. Form 1099 indicating that the seller received 100%
of the \$1,300,000 gross proceeds from the sale of the property. The form
overstated the proceeds paid to the seller by \$150,000, which was the amount
improperly disbursed to a disinterested, third party, Frank Padilla, who was not a
party to the escrow transaction.

8 **2. Escrow #06115700-041-ML**

9 **Open Date:** 04-13-06 **Close Date:** 06-12-06

10 **HUD-1 Contract Sales Price:** \$530,000

11 **Escrow Officer:** Monica Lopez

12 **Cash-out:** \$100,000 to Frank Padilla

13 **Loan Status:** Foreclosure initiated on 7-20-07

- 14 1. The \$100,000 cash-out disbursement to Frank Padilla, directly from escrow
15 proceeds, was not disclosed on the Final HUD-1 escrow settlement statement
16 provided to the lender;
- 17 2. Ms. Lopez failed to disclose the \$100,000 cash-out disbursement directly from the
18 seller's escrow proceeds in the Final HUD-1 escrow settlement statement;
- 19 3. By not disclosing the \$100,000 cash-out disbursement from escrow proceeds, a
20 true, complete and accurate disclosure of funds disbursed directly from escrow
21 proceeds was not provided to the lender on the Final HUD-1 escrow settlement
22 statement;
- 23 4. Nothing in the escrow file indicates that the lender was notified or made aware of
24 the intended \$100,000 disbursement directly from escrow proceeds to Frank
25 Padilla; and
- 26 5. Frank Padilla was not a party to the escrow transaction.

3. Escrow #06112873-041-ML

Open Date: 03-17-06 **Close Date:** 04-27-06

HUD-1 Contract Sales Price: \$750,000

Escrow Officer: Monica Lopez

Cash-Out: \$100,000 to Frank Padilla

Loan Status: Foreclosure initiated on 12-07-06

1. The \$100,000 cash-out disbursement, directly from escrow proceeds, was not
disclosed on the Final HUD-1 escrow settlement statement provided to the lender;
2. \$209,043.14 was to be paid to the seller pursuant to the Final HUD-1 escrow
settlement statement. The Final Escrow Disbursement Report shows that Ms.
Lopez issued check #329668 in the amount of \$110,921.92, which is contrary to
the provisions of the Final HUD-1 escrow settlement statement;
3. The Final HUD-1 escrow settlement statement does not provide for the

4. Ms. Lopez failed to disclose the \$100,000 cash-out disbursement directly from the seller's escrow proceeds in the Final HUD-1 escrow settlement statement;
5. By not disclosing the \$100,000 cash-out disbursement from escrow proceeds, a true, complete, and accurate disclosure of funds disbursed directly from escrow proceeds was not provided to the lender on the Final HUD-1 escrow settlement statement; and
6. Frank Padilla was not a party to the escrow transaction.

4. Escrow #06110423

Open Date: 02-16-06 Close Date: 04-25-06**HUD-1 Contract Sales Price: \$410,000**

Escrow Officer: Monica Lopez

Seller's Concession to Buyer: \$102,263.23

1. On April 18, 2006, Ms. Lopez signed the Certification Addendum to HUD-1 settlement statement, which states: "The HUD-1 settlement statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.";
2. \$161,275.62 was to be paid to the seller pursuant to the HUD-1 escrow settlement statement. The Escrow Ledger Listing shows that Ms. Lopez issued check #328265 to the seller in the amount of \$58,485.95, which is contrary to the provisions of the HUD-1 escrow settlement statement;
3. The \$102,263.23 resultant reduction in the buyer's contract sales price was not reflected in the Final HUD-1 escrow settlement statement provided to the lender;
4. Ms. Lopez issued a mortgage loan payoff check for \$349.99 less than the stated payoff amount;
5. The Authorization for Proceeds Distribution form was not disclosed to or made available to the lender prior to the lender's disbursement of loan proceeds;
6. The disbursement, transfer, payment, or other offset credit of the \$102,263.23 from the seller's escrow funds to pay the buyer's closing costs was not provided for in the HUD-1 escrow settlement statement or in the lender's closing instructions;
7. Ms. Lopez failed to disclose the \$102,263.23 offset credit from the seller's escrow proceeds in the Final HUD-1 escrow settlement statement;
8. By not disclosing the \$102,263.23 offset credit from seller to buyer and by modifying the distribution of escrow proceeds, a true, complete, and accurate disclosure of funds disbursed directly from escrow proceeds was not provided to the lender on the Final HUD-1 escrow settlement statement;
9. Ms. Lopez's disbursement, transfer, payment, or other offset credit of the \$102,263.23 directly from the escrow proceeds due to the seller to pay the buyer's closing costs is not documented or accounted for on the Escrow Ledger Listing, in the Final Disbursement Report, or in any other manner in Ms. Lopez's escrow documentation file; and
10. Ms. Lopez failed to follow the lender's Specific Written Closing Instructions and disbursed escrow funds contrary to the lender's closing instructions.

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1 **5. Escrow #06112857-041-ML**

2 **Open Date:** 03-17-06 **Close Date:** 05-24-06

3 **Escrow Amount:** \$550,000

4 **Escrow Officer:** Monica Lopez

5 **Cash-Out:** \$48,944.90 to Frank Padilla

6 **Loan Status:** Foreclosure initiated on 11-27-06

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1. The \$48,944.90 cash-out disbursement, directly from escrow proceeds, was not disclosed on the Final HUD-1 escrow settlement statement;
 2. Ms. Lopez failed to disclose the \$48,944.90 cash-out disbursement directly from the seller's escrow proceeds in the Final HUD-1 escrow settlement statement;
 3. By not disclosing the \$48,944.90 cash-out disbursement from escrow proceeds, a true, complete, and accurate disclosure of funds disbursed directly from escrow proceeds was not provided to the lender on the Final HUD-1 escrow settlement statement;
 4. The disbursement to Frank Padilla does not appear on the Final HUD-1 escrow settlement statement;
 5. The \$48,944.90 cash-out disbursement by Ms. Lopez was not indicated and approved of in the lender's closing instructions;
 6. Ms. Lopez failed to obtain written approval for the \$48,944.90 disbursement of escrow funds directly from escrow proceeds to Frank Padilla, who was not a party to the escrow transaction; and
 7. No instructions by the seller or approval by the lender were documented in the escrow file.

14 **6. Escrow #06112875-041-ML**

15 **Open Date:** 04-24-06 **Close Date:** 05-17-06

16 **HUD-1 Contract Sales Price:** \$631,000

17 **Escrow Officer:** Monica Lopez

18 **Cash-Out:** \$82,000 to Frank Padilla

19 **Loan Status:** Foreclosure initiated on 11-13-06

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1. The \$82,000 cash-out disbursement, directly from escrow proceeds, was not disclosed on the Final HUD-1 escrow settlement statement;
 2. The \$82,000 cash-out disbursement to Frank Padilla, directly from escrow proceeds, was not disclosed on the Final HUD-1 escrow settlement statement provided to the lender;
 3. By not disclosing the \$82,000 cash-out disbursement from escrow proceeds, a true, complete and accurate disclosure of funds disbursed directly from escrow proceeds was not provided to the lender on the Final HUD-1 escrow settlement statement;
 4. Ms. Lopez failed to obtain written approval for the \$82,000 disbursement of escrow funds directly from escrow proceeds to Frank Padilla, who was not a party to the escrow transaction;
 5. A Disposition of Proceeds form and an Irrevocable Assignment of Funds form were signed by the seller instructing Ms. Lopez to disburse \$82,000 directly from escrow proceeds to Frank Padilla. These forms were not signed by, provided to, or acknowledged by the lender; and
 6. The lender's instructions did not provide for an \$82,000 disbursement of escrow

1 funds directly from escrow proceeds to Frank Padilla.

2 **7. Escrow #06118349-041-ML**

3 **Open Date:** 04-19-06 **Close Date:** 06-09-06

4 **HUD-1 Contract Sales Price:** \$555,000

5 **Escrow Officer:** Monica Lopez

6 **Cash-Out:** \$65,000 to Frank Padilla

7 **Loan Status:** Foreclosure initiated on 12-12-06

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1. The \$65,000 cash-out disbursement, directly from escrow proceeds, was not disclosed on the Final HUD-1 escrow settlement statement;
 2. The \$65,000 cash-out disbursement, directly from escrow proceeds, was not disclosed on the Final HUD-1 escrow settlement statement and was not disclosed on the Pre-Audit HUD-1 escrow settlement statement provided to the lender;
 3. By not disclosing the \$65,000 cash-out disbursement from escrow proceeds, a true, complete and accurate disclosure of funds disbursed directly from escrow proceeds was not provided to the lender on the Final HUD-1 escrow settlement statement;
 4. A Disposition of Proceeds form and an Irrevocable Assignment of Funds form were signed by the seller instructing Ms. Lopez to disburse \$65,000 directly from escrow proceeds to Frank Padilla. These forms were not signed by, provided to, or acknowledged by the lender; and
 5. The lender's instructions did not provide for a \$65,000 disbursement of escrow funds directly from escrow proceeds to Frank Padilla.

14 4. Respondent improperly disbursed \$545,944.90 (five hundred forty five thousand, nine

15 hundred forty four dollars and thirteen cents) contrary to the provisions of HUD-1 escrow settlement

16 statements or written escrow instructions.

17 **LAW**

18 1. Pursuant to Title 6, Chapter 7, of the Arizona Revised Statutes, the Superintendent has

19 the authority and duty to regulate all persons engaged in the escrow agent business and with the

20 enforcement of statutes, rules, and regulations relating to escrow agents.

21 2. By the conduct set forth above, Ms. Lopez has violated statutes governing escrow agents

22 as follows:

- 23 a. A.R.S. § 6-841(B) by failing to maintain adequate escrow file documentation; and
- 24 b. A.R.S. §§ 6-841, 6-834(A) and 6-841.01 by failing to properly account for escrow
- 25 property by improper disbursement of escrow funds; specifically:
- 26 i. A.R.S. § 6-834(A) by failing to properly account for escrow property as

1 required by the terms of the escrow;

2 ii. A.R.S. § 6-834(A) and A.R.S. § 6-841 by failing to disburse funds in
3 accordance with the provisions of the HUD-1 escrow; and

4 iii. A.R.S. § 6-834(A) and A.R.S. § 6-841 by failing to follow written escrow
5 instructions;

6 3. Ms. Lopez's conduct, as set forth above, constitutes acts, omissions, and practices which
7 demonstrate personal dishonesty or unfitness to continue in office or to participate in the conduct of
8 the affairs of any financial institution or enterprise and is grounds for removal and the prohibition of
9 Ms. Lopez within the meaning of A.R.S. § 6-161(A)(1).

10 4. Ms. Lopez's violation of A.R.S. § 6-841(B) constitutes grounds for the removal and
11 prohibition of Ms. Lopez from participating in any manner in the conduct of the affairs of any
12 financial institution or enterprise, pursuant to A.R.S. § 6-161(A)(6).

13 5. Ms. Lopez's violations of A.R.S. §§ 6-841, 6-834(A) and 6-841.01 constitute grounds for
14 the removal and prohibition of Ms. Lopez from participating in any manner in the conduct of the
15 affairs of any financial institution or enterprise, pursuant to A.R.S. § 6-161(A)(6).


16 6. The violations, set forth above, constitute grounds for the Superintendent to order the
17 removal and the prohibition of Ms. Lopez from further participation in any manner as a director,
18 officer, employee, agent or other person in the conduct of the affairs of any financial institution or
19 enterprise, pursuant to A.R.S. § 6-161.

20 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
21 above-described violations, the Superintendent may remove and prohibit Ms. Lopez from further
22 participation in any manner in the conduct of the affairs of any financial institution or enterprise
23 pursuant to A.R.S. § 6-161(E) and may order any other remedy necessary or proper for the
24 enforcement of the statutes and rules regulating escrow agents in Arizona pursuant to A.R.S.
25 §§ 6-123, 6-131 and 6-161.

26 ...

1 DATED this 16th day of 2008.

2 Felecia A. Rotellini
3 Superintendent of Financial Institutions

4 By 
5 Robert D. Charlton
6 Assistant Superintendent of Financial Institutions

7 ORIGINAL of the foregoing filed this
8 16th day of 2008, in the office of:

9 Felecia A. Rotellini
10 Superintendent of Financial Institutions
11 Arizona Department of Financial Institutions
12 ATTN: Susan L. Longo
13 2910 N. 44th Street, Suite 310
14 Phoenix, AZ 85018

15 COPY mailed/delivered same date to:

16 Lewis Kowal
17 Administrative Law Judge
18 Office of Administrative Hearings
19 1400 W. Washington, Suite 101
20 Phoenix, AZ 85007

21 Craig A. Raby
22 Assistant Attorney General
23 Office of the Attorney General
24 1275 W. Washington
25 Phoenix, AZ 85007

26 Robert D. Charlton, Assistant Superintendent
Richard Carpenter, Senior Examiner
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

COPY MAILED SAME DATE by Regular Mail
and Certified Mail, Return Receipt Requested, and
SERVED SAME DATE by Process Server, to:

Monica Lopez
6875 N. Oracle Road
Suite #105
Tucson, AZ 85704

...

1 Thomas W. Sullivan, Sr., Owner
Thomas Sullivan, Jr., President
2 Vivian Bogie, Executive Vice President
Title Security Agency of Arizona
3 6390 East Tanque Verde Road
Tucson, AZ 85715
4

5 By: *Susan L Longo*
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